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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,210	01/02/2004	Kenneth K. Cyr	CRNL111423	6655
46169 7590 02/02/2009 SHOOK, HARDY & BACON L.L.P. Intellectual Property Department 2555 GRAND BOULEVARD KANSAS CITY, MO 64108-2613			EXAMINER DUNHAM, JASON B	
			ART UNIT 3625	PAPER NUMBER
			MAIL DATE 02/02/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/750,210

Applicant(s)

CYR ET AL.

Examiner

JASON B. DUNHAM

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/24/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☒ Claim(s) 27-38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant amended claims 27-38 in the response filed November 24, 2008 to overcome the previous 35 USC 112, 1st and 2nd paragraph rejections in the July 24, 2008 non-final office action for lack of enablement and indefiniteness, respectively. Claims 1-38 are pending.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Applicant is advised that should claims 15-26 be found allowable, claims 27-38 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). While the preambles of independent claims 15 and 27 vary slightly, the bodies of the claims are identical.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-38 rejected are under 35 U.S.C. 102(b) as being anticipated by DeBusk (US 5,682,728).

Referring to claim 1. Debusk discloses a system for automatically fulfilling orders for clinically related supplies, comprising:

- An interface to a supply chain engine, the supply chain engine automatically generating at least one order for clinically related supplies based upon supply consumption data derived from documentation of at least one clinical event reported from at least one clinically related site, the supply consumption data including items used or consumed during the at least one clinical event (Debusk: column 5, lines 6-21 and column 6, lines 47-59). The examiner submits that DeBusk discloses generating orders based upon specific patient's needs in a clinical event such as surgery.
- A fulfillment engine, communicating with the interface to the supply chain engine, the fulfillment engine triggering delivery of clinically related supplies based at least upon the at least one order for clinically related supplies (DeBusk: column 4, lines 51-65).

Referring to claim 2. Debusk further discloses a system wherein the clinically related site comprises a hospital facility (DeBusk: column 1, lines 13-39).

Referring to claim 3. Debusk further discloses a system wherein the supply consumption data includes clinically available quantities of surgical devices (DeBusk: column 1, lines 36-48, column 2, lines 29-40, and column 6, lines 47 - 59).

Referring to claim 4. Debusk further discloses a system wherein the supply chain engine generates the at least one clinical supply order based upon at least one clinical quantity threshold (DeBusk: column 3, lines 25 – 50).

Referring to claim 5. Debusk further discloses a system wherein the at least one order for clinically related supplies comprises a purchase order (DeBusk: column 2, line 41 – column 3, line 24).

Referring to claims 6-7. Debusk further discloses a system wherein the supply consumption data includes supply codes captured in the at least one clinically related site and are manually entered codes (DeBusk: column 3, lines 25-50).

Referring to claim 8. Debusk further discloses a system wherein the at least one order comprises a plurality of orders, and the fulfillment engine aggregates the order for clinically related supplies for delivery (DeBusk: figure 3).

Referring to claim 9. Debusk further discloses a system wherein the orders for clinically related supplies are aggregated for a plurality of clinical departments (DeBusk: column 3, lines 25-50).

Referring to claim 10. Debusk further discloses a system wherein the at least one order for clinically related supplies is associated with an individual patient supply record (DeBusk: column 6, lines 47-59).

Referring to claim 11-12. Debusk further discloses a system wherein the fulfillment engine triggers delivery of the at least one order for clinically related supplies based upon the at least one order for clinically related supplies and upon a set of rules (DeBusk: column 4, lines 51-65), the set of rules comprising a set of selectors based upon patient condition information (DeBusk: column 4, lines 30-65).

Referring to claims 13-14. Debusk further discloses a system wherein the fulfillment engine is local or remote to the at least one clinically related site (DeBusk: column 5, lines 6-21).

Referring to claims 15 - 26. Method claims 15-26 are rejected under the same rationale set forth above in the rejection of systems claims 1-14 containing similar limitations.

Referring to claims 27-38. See the double patenting objection above in view of method claims 15-26. The limitations are rejected under the same rationale set forth above in the rejection of system claims 1-14.

Response to Arguments

Applicant's arguments filed November 24, 2008 regarding the 35 USC 102(b) rejection in view of DeBusk have been fully considered but they are not persuasive.

Applicant argues that Debusk does not disclose automatically generating at least one order based supply consumption data derived from documentation of at least one clinical event including items used and/or consumed during a clinical event. The examiner disagrees. Column 5, lines 50-67 of DeBusk disclose a hospital, through its historical usage records for its medical supplies for a given care event (emphasis added), can readily order from a manufacturer, those medical supplies required for a given care event. Therefore, DeBusk does disclose data derived from a clinical event (i.e. historical usage records of supplies for previous care events) for order future supplies for a similar care event.

Applicant further argues that DeBusk does not disclose generating an order based on a clinical quantity threshold as recited in claim 4. The examiner disagrees. DeBusk discloses stocking medical supplies on the basis of historical information as to the number of given medical procedures (care events) that are to be expected within a given time frame based on statistically calculable demands. The demands are calculated to reduce supply inventory while allowing the institution to maintain available supply when needed (column 3, lines 25-50). The examiner submits that the calculable demands used to maintain supply by ordering by procedure are equivalent to a quantity threshold.

Independent claims 15 and 27 and the respective dependent claims of claims 1, 15, and 27 are rejected under the same rationale.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON B. DUNHAM whose telephone number is (571)272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Smith/
Supervisory Patent Examiner, Art
Unit 3625

JBD
1/26/09